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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 KENNETH WAYNE LEAMING,

9 Plaintiff,

10 v.

11 J. SIMMONS, *et al.*,

12 Defendants.

Case No. C13-759-JCC-JPD

REPORT AND RECOMMENDATION

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14 INTRODUCTION AND SUMMARY CONCLUSION

15 Plaintiff Kenneth Wayne Leaming is a federal prisoner who is currently incarcerated at  
16 the Federal Correctional Institution at Terre Haute, Indiana. Plaintiff initiated this action while  
17 he was confined at the Federal Detention Center in SeaTac, Washington (FDC SeaTac). Plaintiff  
18 alleged in his pleadings violations of his constitutional rights arising out of the conditions of his  
19 confinement at FDC SeaTac. Plaintiff also alleged that his detention pursuant to a then pending  
20 criminal action was unlawful. Based on the allegations set forth in plaintiff's pleadings, this  
21 Court determined that this action was most properly construed as one brought pursuant to *Bivens*  
22 *v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) and that, so construed, plaintiff  
23 had not adequately alleged any viable cause of action.

REPORT AND RECOMMENDATION - 1

1 Plaintiff was granted an opportunity to file an amended complaint in order to cure  
2 deficiencies in his original pleadings, but he has not done so and the time for doing so has now  
3 passed. Accordingly, this Court recommends that plaintiff's original and supplemental  
4 pleadings, and this action, be dismissed prior to service pursuant to 28 U.S.C. § 1915(e)(2)(b) for  
5 failure to state a claim upon which relief may be granted.

#### 6 DISCUSSION

7 Plaintiff initiated this action in April 2013 by filing a complaint for damages and for  
8 declaratory and injunctive relief in the United States District Court for the District of Columbia.  
9 (*See* Dkt. 1.) Plaintiff alleged therein that four employees at FDC SeaTac had violated his due  
10 process rights in relation to a disciplinary proceeding that took place in January 2013. (*See id.*)  
11 The case was subsequently transferred to this district and plaintiff thereafter filed a supplemental  
12 pleading entitled "Amended Claims For: Contract Enforcement; Violation(s) of Due Process;  
13 Retaliation for Exercise of Protected Rights; Human Trafficking; Conspiracy Against Rights;  
14 etc.." (*See* Dkts. 3 and 9.) Plaintiff identified in his supplemental pleading an additional six  
15 defendants and a number of additional claims for relief including more claims concerning  
16 disciplinary proceedings, claims regarding interference with his mail and with his right to  
17 religious freedom, and claims challenging the validity of his confinement under criminal case  
18 number CR12-5039-RBL. (*See* Dkt. 9.)

19 On November 6, 2013, this Court issued an Order declining to serve plaintiff's pleadings  
20 and granting him leave to file an amended complaint to correct certain specified deficiencies.  
21 (Dkt. 21.) The primary deficiencies noted by the Court in its Order concerned plaintiff's failure  
22 to allege specific facts demonstrating that each named defendant had personally participated in  
23 causing him harm of federal constitutional dimension. (*Id.* at 3-4.) The Court also noted that

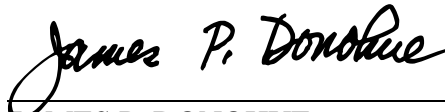
1 any claim for damages based on plaintiff's alleged unlawful detention was premature because  
2 plaintiff had not demonstrated that his confinement had been invalidated in any way, a  
3 prerequisite for any civil rights claim that calls into question the lawfulness of a prisoner's  
4 confinement. *See Heck v. Humphrey*, 512 U.S. 47, 489 (1994).

5 Plaintiff was granted thirty days within which to file an amended complaint curing the  
6 deficiencies identified by the Court and was advised that his failure to do so would result in a  
7 recommendation that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B). Plaintiff has not  
8 filed an amended complaint.

### 9 CONCLUSION

10 When a complaint is frivolous, malicious, fails to state a claim on which relief may be  
11 granted, or seeks monetary relief against a defendant who is immune from such relief, the Court  
12 may dismiss an *in forma pauperis* complaint before service of process under 28 U.S.C.  
13 § 1915(e)(2)(B). Because plaintiff has not adequately alleged a cause of action against any of  
14 the named defendants, this Court recommends that plaintiff's original and supplemental  
15 pleadings, and this action, be dismissed, without prejudice, pursuant to § 1915(e)(2)(B). A  
16 proposed order accompanies this Report and Recommendation.

17 DATED this 4th day of February, 2014.

18   
19 JAMES P. DONOHUE  
20 United States Magistrate Judge  
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